

§ 9.2 Enrolled joint resolutions proposing constitutional amendments are submitted to the appropriate Federal official, designated by law, for submission to the States.

Responsibility for receiving from Congress enrolled joint resolutions by which Congress proposes to the States amendments to the Constitution and for transmitting the same to the States has been vested in different officials of the executive branch over time. Currently, that responsibility is vested in the Archivist of the United States.⁽¹⁾ The delivery of such measures to the appropriate official is reported to the House originating the amendment.

An example from 1947 is as follows:⁽²⁾

ENROLLED JOINT RESOLUTION SIGNED

Mr. [Joseph] LeCOMPTE [of Kentucky], from the Committee on House Administration, reported that that committee had examined and found truly enrolled a joint resolution of the House of the following title, which was thereupon signed by the Speaker:

H.J. Res. 27. Joint resolution proposing an amendment to the Constitution of the United States relating to the terms of office of the President.

1. See § 10, *infra*, and 1 USC § 106b (relating to amendments to the Constitution), and related annotations.
2. See 93 CONG. REC. 2482, 80th Cong. 1st Sess., Mar. 24, 1947.

JOINT RESOLUTION FILED WITH THE
SECRETARY OF STATE

Mr. LeCOMPTE, from the Committee on House Administration, reported that that committee did on this day present to and file with the Secretary of State of the United States a joint resolution of the following title:

H.J. RES. 27. Joint resolution proposing an amendment to the Constitution of the United States relating to the terms of office of the President.

Another instance occurred on June 17, 1960:⁽³⁾

ENROLLED JOINT RESOLUTION
PRESENTED

The Secretary of the Senate reported that on today, June 17, 1960, he presented to the Administrator, General Services Administration, the enrolled joint resolution (S.J. Res. 39) proposing an amendment to the Constitution of the United States granting representation in the electoral college to the District of Columbia.

§ 10. Submission to the States; Records of Ratification

The process by which a proposed amendment to the Constitution leaves Congress as officially proposed and eventually becomes effective as part of the Constitution has changed over the years

3. 106 CONG. REC. 13101, 86th Cong. 2d Sess.

and occasionally has included actions by the President not necessary to the effectiveness of the amendment. For example, the two Houses by concurrent resolution asked the President to transmit copies of the proposed 15th amendment to the executives of the States,⁽¹⁾ and the President informed Congress of the promulgation of the ratification of the 15th amendment.⁽²⁾ The President was officially involved only in the first 11 amendments⁽³⁾ and the 15th.⁽⁴⁾

The ministerial functions of transmitting proposed amendments to the States, receiving the notices of ratification by States, and, in some instances, declaring an amendment effective have been carried out successively by the Secretary of State,⁽⁵⁾ the Administrator of General Services,⁽⁶⁾ and the Archivist of the United States.⁽⁷⁾

Early Practice

§ 10.1 President communicated ratification of Bill of Rights to Congress.

1. 5 Hinds' Precedents § 7043. Such a concurrent resolution is not privileged in the House. 8 Cannon's Precedents § 3508.
2. 5 Hinds' Precedents § 7044.
3. See §§ 10.1, 10.2, *infra*.
4. 5 Hinds' Precedents § 7044.
5. See § 10.2, *infra*.
6. See § 10.3, *infra*.
7. See § 10.4, *infra*.

The President notified the Congress of the ratification of the first 10 amendments (the Bill of Rights) by message as follows:⁽¹⁾

The following Message from the President of the United States was received:

*Gentlemen of the Senate, and
of the House of Representatives:*

I lay before you a copy of the ratification, by the Commonwealth of Virginia, of the articles of amendment proposed by Congress to the Constitution of the United States; and a copy of a letter which accompanied said ratification, from the Governor of Virginia.

G. WASHINGTON

UNITED STATES, December 30, 1791.

The papers referred to in the Message are as follows:

COUNCIL CHAMBER,

Richmond, Dec. 22, 1791.

Sir: The General Assembly, during their late session, have adopted, on the part of this Commonwealth, all the amendments proposed by Congress to the Constitution of the United States; their ratification whereof I do myself the honor herewith to transmit.

I have the honor to be, &c.

HENRY LEE.

The PRESIDENT of the United States.

VIRGINIA:

General Assembly, begun and held at the Capitol, in the city of Richmond, on Monday, the 17th day of October, in the year of our Lord 1791.

MONDAY, December 5, 1791.

1. 1 Annals of Cong. 54, 2d Cong. 1st Sess., Dec. 30, 1791.

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Resolved, That the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth articles of the amendments proposed by Congress to the Constitution of the United States, be ratified by this Commonwealth.

December 15th, 1791: Agreed to by the Senate.

JOHN PRIDE,

S[ecretary]. [of the] S[enate].

THOS. MATTHEWS,

S[ecretary]. [of the] H[ouse of]
D[elegates].

Examined.

The House received the same message:⁽²⁾

A message, in writing, was received from the President of the United States, by Mr. Lear, his Secretary, as followeth:

UNITED STATES,

December 30th 1791.

Gentleman of the Senate and the House of Representatives:

I lay before you a copy of the ratification, by the Commonwealth of Virginia, of the articles of amendment proposed by Congress to the Constitution of the United States, and a copy of a letter which accompanied said ratification from the Governor of Virginia.

G. WASHINGTON.

The papers referred to in the said message were read, and ordered to lie on the table.

§ 10.2 President declares 11th amendment; Secretary of

2. H. Jour., Vol. 1, p. 483, 2d Cong. 1st Sess, Dec. 30, 1791.

State assumes record-keeping responsibility.

The Senate adopted a resolution setting out the history of ratification of the first 13 proposed amendments and requesting the President to ascertain whether any States other than those recorded had ratified the 11th amendment: ⁽¹⁾

Mr. [Henry] Tazewell [of Virginia] reported, from the committee on the subject of amendments to the constitution of the United States, which was read, as follows:

“That, of the twelve amendments proposed by Congress, at their session begun and held in New York on the 4th of March, 1789, the following States ratified the 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, prior to the first day of March, 1791, viz. New Jersey, Maryland, North Carolina, South Carolina, New Hampshire, Delaware, New York, Pennsylvania, and Rhode Island; which States making three-fourths of the then thirteen United States, the said amendments have become a part of the constitution

“That the first amendment was ratified prior to the first day of March, 1791, by the following States, viz. New Jersey, Maryland, North Carolina, South Carolina, New Hampshire, New York, and Rhode Island, and, subsequent to that period, by Pennsylvania, Virginia, and Vermont; which number not making three-fourths of the States at the period of ratification, the said

1. S. Jour. Vol. 2, pp. 315, 316, 4th Cong. 2d Sess., Jan. 31, 1797.

amendment has not as yet become a part of the constitution.

“That the second amendment was ratified prior to the 1st day of March, 1791, by the following States: Maryland, North Carolina, South Carolina, Delaware, and, subsequent to that period, by Virginia and Vermont; which number not making three-fourths of the States, the said amendment has not become a part of the constitution.”

“That the amendment respecting the suability of States, which has been proposed by Congress since March, 1791, has been ratified by the following States: New York, Massachusetts, Vermont, New Hampshire, Georgia, Delaware, Rhode Island, and North Carolina, as appears by authentic documents returned to Congress. The committee have strong reasons to believe that other States have ratified this latter amendment, and that the evidences of the fact have not been as yet returned to the proper departments of the government; wherefore, as the number returned do not amount to three-fourths of the States, the said amendment cannot, under present circumstances, be reported as forming a part of the constitution.

Whereupon,

Resolved, by the Senate and House of Representatives of the United States, That the President be requested to adopt some speedy and effectual means of obtaining information from the States of Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, Kentucky, Tennessee, and South Carolina, whether they have ratified the amendment proposed by Congress to the constitution concerning the suability of States; if they have, to obtain the proper evidences thereof.

Ordered, That the Secretary desire the concurrence of the House of Representatives in this resolution.

The House agreed to the resolution on Feb. 24, 1797.⁽²⁾

The President transmitted to the Congress a message not only indicating that a particular State had ratified an amendment, but also declaring that the amendment had become part of the Constitution. The Journal recorded receipt of the message as follows:⁽³⁾

A message, in writing, was received from the President of the United States, by Mr. Taylor, Chief Clerk in the Department of State, as followeth:

Gentleman of the Senate and Gentleman of the House of Representatives:

I have now an opportunity to transmit to Congress a report of the Secretary of State, with a copy of an act of the Legislature of the State of Kentucky, consenting to the ratification of the amendment of the Constitution of the United States, proposed by Congress in their resolution of the second day of December, one thousand seven hundred and ninety-three, relative to the suability of States. This amendment having been adopted by three-fourths of the several States, may now be declared to be a part of the Constitution of the United States.

JOHN ADAMS.

UNITED STATES, *January 8th*, 1798.

2. H. Jour. Vol. 2, p. 718, 4th Cong. 2d Sess.
3. H. Jour. Vol. 3, p. 126, 5th Cong. 2d Sess., Jan. 8, 1798.

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The said message, and papers referred to therein, were read, and ordered to lie on the table.

The message also indicates that the President directed the Secretary of State to keep records on the ratification of amendments by the States, beginning an historical pattern that continued until the Reorganization Plan No. 20 of 1950 transferred the responsibility from the Secretary of State.⁽⁴⁾

Certification, Publication, and Preservation Functions Vested in the Administrator of General Services

§ 10.3 A Presidential reorganization plan transferred responsibility for certification, publication, and preservation of constitutional amendments from the Secretary of State to the Administrator of General Services.

Under the authority of the Reorganization Act of 1949,⁽¹⁾ President Harry S Truman transmitted Reorganization Plan No. 20 of 1950⁽²⁾ to the Congress on Mar. 13, 1950.

4. See § 10.3, *infra*. For an example of a State's certificate of ratification sent to the Secretary of State with a copy laid before the House, see 76 CONG. REC. 35, 72d Cong. 2d Sess., Dec. 5, 1932.

1. 5 USC §§ 901 *et seq.*

2. 5 USC App. Reorganization Plan No. 20 of 1950.

The plan, in pertinent part, read as follows:

STATUTES AT LARGE AND OTHER MATTERS

SECTION 1. FUNCTIONS TRANSFERRED FROM DEPARTMENT OF STATE TO ADMINISTRATOR OF GENERAL SERVICES

There are hereby transferred to the Administrator of General Services the functions of the Secretary of State and the Department of State with respect to: . . .

(c) The certification and publication of amendments to the Constitution of the United States (. . . [1 USC § 106b]) and the preservation of such amendments.

The message of the President transmitting the Reorganization Plan included the following:

Since its establishment in 1789 the Department of State has performed certain routine secretarial and record-keeping functions for the Federal Government which are entirely extraneous to the conduct of foreign relations. While these activities do not properly belong in the Department, they were assigned to it and continued under its jurisdiction for want of an appropriate agency for their performance. . . .

Through the National Archives and Records Service the General Services Administration is especially staffed and equipped for the conduct of activities of these types.

Functions Vested in the Archivist of the United States

§ 10.4 Archivist charged with printing and certifying adoption of amendments.

Effective Apr. 1, 1985, section 106b of title 1, United States Code, ⁽¹⁾ was amended⁽²⁾ to transfer from the Administrator of General Services to the newly established Archivist of the United States the responsibility for publishing and certifying the adoption of amendments to the Constitution.

The Archivist of the United States first executed this responsibility under section 106b of title 1, United States Code, in 1992 when the 27th amendment was published and certified as having been adopted.⁽³⁾

1. Section 106b of title 1, United States Code, reads as follows:

§ 106b. Amendments to Constitution

Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

2. Section 107(d) of the National Archives and Records Administration Act of 1984 (Pub. L. No. 98-497; Oct. 19, 1984, 98 Stat. 2291).
3. *House Rules and Manual* § 258, footnote 18 (2007).

§ 11. State Consent; Withdrawal and Rescission of Withdrawal

Under Article V of the Constitution, the approval of three-fourths of the States is required to ratify an amendment to the Constitution. Whether a State may rescind its ratification of a constitutional amendment has been the subject of discussion⁽¹⁾ and litigation.⁽²⁾ A State, having previously rescinded its ratification before the effectiveness of an amendment, has later ratified the amendment (after it had become effective). For example, on Mar. 12, 2003,⁽³⁾ the Ohio General Assembly passed a joint resolution ratifying the 14th Amendment. The joint resolution recited the history of Ohio's action with respect to the 14th amendment, as follows: Ohio ratified the amendment on Jan. 11, 1867, but rescinded such ratification on Jan. 15, 1868 (the amendment becoming effective six months later).

1. See 5 Hinds' Precedents § 7042.
2. For relevant case law, see *House Rules and Manual* § 192 (2007).
3. The memorial was noted at 150 CONG. REC. p. _____ [Daily ed. H36], 108th Congress 2d Sess., Jan. 20, 2004. See also *Id.* for a memorial from New Jersey revoking an earlier attempt to withdraw its ratification of an amendment.